85-888

No. _____

Supreme Court of the United States

October Term, 1985

Lonnie L. Adkins; Philip Peterson; D. W. Thompson; G. R. Gibson; B. W. Payne; J. E. Smith; C. R. Mowbray; J. H. Thompson; G. R. Wertz; R. E. Cooper; A. L. Hartwell; and B. L. Fuller; on behalf of themselves and all others similarly situated,

Petitioners,

v.

Times-World Corporation; Roanoke Typographical Union #60; and International Typographical Union,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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November, 1985.

ROANOKE PRINTING CO., INC., ROANOKE, VA.

QUESTIONS PRESENTED

1. Did the Fourth Circuit err when it declined to follow the doctrine of the Second Circuit that interlocutory orders granting stays of arbitration are not appealable as "injunctions" under the Interlocutory Appeals Act, 28 U.S.C. § 1292(a) (1), and instead followed the rule of the Ninth Circuit in allowing such an interlocutory appeal?

2. Did the Fourth Circuit err when it instructed a District Court to relegate the plaintiff employees to arbitration procedures controlled by the employer and the Union, in the face of pleadings that both the Local and the International were hostile to plaintiffs and had breached their duty of fair representation, and without provision for an evidentiary hearing to determine the merit of the employees' allegations?

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v.

Times-World Corporation; Roanoke Typographical Union # 60; and International Typographical Union,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners, Lonnie L. Adkins, et al., pray that a writ of certiorari issue to review the judgment of the United State Court of Appeals for the Fourth Circuit entered on August 23, 1985.

OPINION BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported at 771 F.2d 829. The District Court's interlocutory order staying arbitration, entered when the case had been pending only five months, was not reported.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on August 23, 1985. A timely petition for rehearing, and suggestion for rehearing in banc, were denied on October 2, 1985. This petition for certiorari was filed within ninety days of that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 28:

§1292. *Interlocutory Decisions*

(a) . . . [T]he courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court,

STATEMENT OF THE CASE

Two journeyman printers employed by the Roanoke Times & World News, who were subsequently joined by 14 others, on March 15, 1983 filed an action in the United States District Court for the Western District of Virginia seeking declaratory relief and compensatory and punitive damages for breach of a document entitled the "Addendum" to a collective bargaining agreement between Times-World Corporation and Roanoke Typographical Union No. 60. The jurisdiction of the District Court was invoked under § 301 of the Labor Management

Relations Act of 1947, 29 U.S.C. § 185. The addendum had guaranteed some 45 journeyman printers "lifetime job security within the composing room . . . ." Three of the printers, among them petitioner Adkins, were nevertheless laid off. The defendant Times-World Corporation moved to dismiss and for summary judgment, claiming that the arbitration provision of the collective bargaining agreement also required arbitration of disputes concerning the addendum.

Without waiting for the District Court to determine arbitrability of the dispute, the Local and International Typographical Union joined with the newspaper in selecting an arbitrator and scheduled arbitration proceedings. Plaintiffs moved to stay the arbitration proceedings, and joined both the Local and the International as defendants in an amended complaint, alleging that the officials of the Local and the International were hostile to plaintiffs and had breached their duty of fair representation. It was also alleged that "Adkins was not consulted in the choice of an arbitrator. He was not informed when or where the arbitration was to take place. He was not advised of his right to be present. His counsel was not consulted in the selection of an arbitrator, nor was his counsel advised of the time and place of arbitration, or invited to be present, although the defendant Local and the defendant International well knew that Adkins had counsel, and the identity of such counsel." It was alleged that the Local and the International had at the insistence of the newspaper wrongfully conceded a basic point to the prejudice of the journeyman printers, in agreeing that the addendum and the collective bargaining agreement were in essence one document, which placed the newspaper in position to argue that the guaranties of lifetime job security would terminate when the collective bargaining agreement itself terminated.

The District Court on August 16, 1983 handed down the following ruling:

> "This case came on to be heard on the Defendants' Motion to Dismiss and the Plaintiffs' Motion to Stay Arbitration. After consideration of the arguments and briefs of counsel, supporting affidavits, depositions, and other documents, the Court is of the opinion that the Defendants' Motion should be denied and that the Plaintiffs' Motion should be granted.
>
> "At this stage of the proceedings, it appears to the Court that the 'Addendum', which is a contract covering the job security of the Plaintiffs, is not a part of the basic agreement between the Union and Times-World, but is a separate agreement which is not subject to the arbitration provisions of the basic contract.
>
> "WHEREFORE, it is hereby ORDERED that the Defendants' Motion to Dismiss be and is hereby denied and that the Plaintiffs' Motion to Stay Arbitration is hereby granted. Accordingly, all arbitration between the Defendants shall be stayed until further order of this Court."

Times-World Corporation appealed this interlocutory order on the ground that the grant of the stay of arbitration was an "injunction" within the meaning of 28 U. S. C. § 1292(a)(1). Plaintiffs moved to dismiss the appeal, citing authority that the stay of arbitration was not an injunction and that the Court lacked jurisdiction of the appeal. The issue was extensively briefed. On November 8, 1984 the Fourth Circuit entered an order deferring decision on the motion to dismiss until argument on the merits.

The Fourth Circuit reversed the District Court on August 23, 1985, without reference to the motion to dismiss the appeal and to the concommitant issue of its jurisdiction. A petition for rehearing and suggestion for rehearing in banc were denied on October 2, 1985. Copies of the deferring decision of the motion to dismiss, of the opinion, and of the order denying the petition for rehearing are in the appendix.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEAL AS TO THE APPEALABILITY OF ORDERS GRANTING STAYS OF ARBITRATION UNDER 28 U.S.C. § 1292(a)(1).

The decision of the Fourth Circuit emphasizes and adds to the conflict among the circuits on the issue of whether orders granting or denying stays of arbitration are "injunctions" for the purposes of interlocutory appeals under 28 U.S.C. § 1292(a)(1). The Second Circuit has from the beginning taken the position that they are not. *Lummus Co.* v. *Commonwealth Oil Refining Co.*, 297 F.2d 80 (2d Cir. 1961), *cert. den.*, 368 U. S . 986 (1962); *Greater Continental Corp.* v. *Schechter*, 422 F.2d 1100 (2d. Cir. 1970); *Diematic Manufacturing Corp.* v. *Packing Industries*, 516 F.2d 975, 977 (2d Cir. 1975). ("The order staying arbitration itself is clearly not an injunction within section 1292(a)(1) . . . .")

The leading circuit in opposition to the Second on this issue is the Ninth. *A. & E. Plastik Pak v. Monsanto Co.*, 396 F.2d 710 (9th Cir. 1968); *Power Replace-*

ments v. *Air Preheater Co.,* 426 F.2d 930 (9th Cir. 1970); *Alascom, Inc.* v. *ITT North Electric Co., 727* F.2d 1419, 1422 (9th Cir. 1984) ("We agree that the grant of a motion to stay arbitration is reviewable under section 1292 (a) (1.).")

The Sixth Circuit considers that the view of the Second is also the view of the Third and Eighth Circuits. *North Supply Co. v. Greater Development and Services Corp.,* 728 F.2d 363, 367 (6th Cir. 1984). ("The blanket rule against appealability espoused by the Second Circuit has been adopted by both the Third and Eighth Circuits as well. Stateside Machinery Co. v. Alperin, 526 F.2d 480 (3d Cir. 1975); Mellon Bank, N.A. v. Pritchard-Keang Nam Corp., 651 F.2d 1244 (8th Cir. Corp. 1981).")

The First Circuit states that it is now following the Second. *Langley* v. *Colonial Leasing Co.,* 707 F.2d 1 (1st Cir. 1983); *Hartford Financial Systems* v. *Florida Software Services,* 712 F.2d 724, 729 (1st Cir. 1983). ("In short, we believe that Langley, following the Second Circuit, governs appealability in this case. We therefore lack jurisdiction to hear this appeal; and it is [d]ismissed.")

The remainder of the Circuits have adopted varying positions between those of the Second and Ninth. The Sixth allows interlocutory appeals from orders staying arbitration, *Buffler* v. *Electronic Computer Programming Institute, Inc.,* 466 F.2d 694 (6th Cir. 1972), but denies the appealability of orders refusing such stays. *North Supply Company* v. *Greater Development and Services Corp.,* 728 F.2d 363, 368 (6th Cir. 1984) ("[W]e hold that the district court's order denying the motion for a stay of arbitration is nonappealable and therefore dismiss the appeal for lack of jurisdiction.")

The conflicts among the circuits are rendered more acute and complex by the holding of the Seventh and First Circuits that the issue depends upon the nature of the underlying action as legal or equitable. *Enelow* v. *New York Life Ins. Co.,* 293 U.S. 379 (1935); *Ettelson* v. *Metropolitan Life Ins. Co.,* 317 U.S. 188 (1942); *Whyte* v. *THinc Consulting Group International,* 659 F.2d 817, 819 (7th Cir. 1981) (". . . [T]his Court is in agreement with the D.C. and Third Circuits that the appealability of an interlocutory order refusing or granting a stay of arbitration proceedings is also governed by the Enelow-Ettelson rule."); *Timberlake* v. *Oppenheimer and Co.,* 729 F.2d 515 (7th Cir. 1984).

The First Circuit, although stating that it follows the Second, also applies *Enelow-Ettelson. Langley* v. *Colonial Leasing Co.,* 707 F.2d 1, 5 (1st Cir. 1983) ("We therefore conclude that where *Enelow-Ettelson* requirements are met, i.e., where the underlying suit is 'legal', a district court's grant or denial of an arbitration order is appealable as an injunction under 28 U.S.C. § 1292(a) (1) . . . .")

The Ninth and Sixth Circuits deny the relevance of *Enelow-Ettelson* to the issue. *Alascom, Inc.* v. *ITT North Electric Co.,* 727 F.2d 1419, 1421 (9th Cir. 1984). ("The Enelow-Ettelson rule does not apply here because the order is not one staying or refusing to stay proceedings in the district court."); *North Supply Company* v. *Greater Development and Services Corp.,* 728 F.2d 363, 368 (6th Cir. 1984) (". . . . [T]he Enelow-Ettelson rule is simply inapplicable where the proceedings sought to be enjoined are not pending before the court in which the equitable claim is asserted but, rather, are in fact pending in a separate tribunal such as arbitration.")

One of the problems with *Enelow-Ettelson* is that actions for declaratory relief[1] are neither legal nor equitable. ("For *Enelow-Ettelson* purposes, they must be converted into one or the other by looking to the kind of action, legal or equitable, that would ultimately have been brought had Congress not provided the declartory judgment remedy." [9 Moore's Federal Practice, ¶110.20[3], at p. 243.])

Two circuits have referred to *Enelow-Ettelson* as a "Serbonian bog". *Diematic Manufacturing Corp.* v. *Packaging Industries, Inc.,* 516 F.2d 975, 978 (2d Cir. 1975); *Hartford Financial Systems* v. *Florida Software Services,* 712 F.2d 724, 727 (1st Cir. 1983). The Eighth Circuit states that "[T]he Enelow-Ettelson rule has been roundly criticized by nearly every court and commentator that has considered its application . . . ." (*Mellon Bank* v. *Pritchard-Keang Nam Corp.* 651 F.2d 1244, 1247 (8th Cir. 1981).) The Sixth Circuit speaks of *Enelow-Ettelson* as an "arcane distinction . . . . criticized by all who have addressed the issue . . . ." *North Supply Co.* v. *Greater Development and Services Corp., supra,* 728 F.2d at 367. The Fourth Circuit, in *Chapman* v. *International Ladies' Garment Workers' Union,* 401 F.2d 626, 629 (4th Cir. 1968), expressed the hope that the Supreme Court "will see fit to clarify this important area of procedural law."

2. THE ACTION OF THE COURT OF APPEALS IN INSTRUCTING THE DISTRICT COURT TO VACATE THE STAY OF ARBITRATION, AND TO SEND THE PARTIES TO ARBITRATION, WITHOUT AN EVIDENTIARY HEARING ON PETITIONERS' WELL-PLEADED ALLEGATIONS OF A BREACH OF FAIR REPRESENTATION BY THE LOCAL AND THE INTERNATIONAL, WAS CONTRARY TO THIS *COURT'S HOLDINGS IN VACA* v. *SIPES, HINES* v. *ANCHOR MOTOR FREIGHT, AND DELCOSTELLO* v. *INTERNATIONAL BROTHERHOOD OF TEAMSTERS.*

1 The first counts of plaintiffs' complaint and amended complaint were for declaratory relief.

It is well settled that an individual may file an individual action under ¶301 of the Labor Management Relations Act. 29 U.S.C. ¶ 185. *Smith* v. *Evening News Association,* 371 U.S. 195 (1962).

It is generally true that an employee in enforcing rights under a collective bargaining agreement which has an arbitration clause must first exhaust that remedy. See the "Steelworkers Trilogy" [*United Steelworkers* v. *American Mfg. Co.,* 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed. 2d 1403 (1960); *United Steelworkers* v. *Warrior & Gulf Nav. Co.,* 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.,* 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960)]

The exception is as well recognized as the rule itself. In *Vaca* v. *Sipes,* 386 U.S. 171 (1967), Mr. Justice White addressed grievance procedures under labor contracts:

> "However, because these contractual remedies have been devised and are often controlled by the union and the employer, *they may well prove unsatisfactory or unworkable for the individual grievant.* The problem then is to determine *under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures."* [386 U.S. at 185; emphasis added]

"For these reasons, we think the wrongfully discharged employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, *provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance.*" [*Ibid.;* emphasis added]

The criterion for determining a breach of the duty of fair representation was then stated:

"A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is *arbitrary, discriminatory, or in bad faith.*" [386 U. S. at 190; emphasis added]

In *Hines* v. *Anchor Motor Freight,* 424 U.S. 554 (1976), Mr. Justice White stated that

". . . .[W]e cannot believe that Congress intended to foreclose the employee from his §301 remedy otherwise available against the employer if the contractual processes have been seriously flawed by the union's breach of its duty to represent employees honestly and in good faith and without invidious discrimination or arbitrary conduct." [424 U.S. 570]

"Congress has put its blessings on private dispute settlement arrangements provided in collective agreements, but it was anticipated, we are sure, that *the contractual machinery would operate within some minimum levels of integrity.* [424 U.S. at 571; emphasis added]

The hostility of both the Local and the International to plaintiffs is detailed in the first count of the amended complaint, which charges a conspiracy on the part of the Local, the International and the employer against these plaintiffs. In the circumstances alleged in plaintiffs' pleadings and affidavits (there has never been an evidentiary hearing in this case, it having been appealed at an early juncture), the Local and the International emerged as more bitter opponents of plaintiffs than the employer. The International made haste to cause the president of the Local to send a letter making a vital concession to the newspaper the day after plaintiffs filed their lawsuit. That concession was that the addendum and the basic collective bargaining agreement were to be considered as one instrument. Plaintiffs' pleadings alleged that the reason the two documents were originally separated was to ensure that the guarantee of lifetime employment contained in the addendum should not terminate when the collective bargaining agreement itself termiated. The newspaper now argues that those guartees have in fact terminated, as of December 31, 1983, when the underlying collective bargaining agreement ended. Deputy sheriffs with deposition subpoenaes came 22 times to the home of the representative of the International who had caused the above-mentioned letter to be sent, so that plaintiffs might take that representative's deposition. All 22 attempts were unsuccessful.

Plaintiffs were not consulted on the identity of an arbitrator, were not told when the arbitration was to take place, and efforts were made by both the International and the employer to speed the arbitration process so that it would be a *fait accompli* before the District Court could rule on the issue of arbitrability. It was these efforts which cause the District Court to issue its order staying arbitration.

In *DelCostello* v. *International Brotherhood of Teamsters,* 462 U.S. 151, (1983), Mr. Justice Brennan stated as follows:

> "It has long been established than an individual employee may bring suit against his employer for breach of a collective bargaining agreement. *Smith* v. *Evening News Assn.,* 371 U.S. 195 (1962). Ordinarily, however, an employee is required to attempt to exhaust any grievance or arbitration remedies provided in the collective bargaining agreement. *Republic Steel* v. *Maddox,* 379 U.S. 650 (1965); cf. *Clayton* v. *Automobile Workers,* 451 U. S. 679 (1981) (exhaustion of intra-union remedies not always required). Subject to very limited judicial review, he will be bound by the result according to the finality provisions of the agreement. See *W. R. Grace* &*Co.* v. *Local 759, ante,* at _____; *Steelworkers* v. *Enterprise Corp.,* 363 U.S. 593 (1960). In *Vaca* and *Hines,* however, *we recognized that this rule works an unacceptable injustice when the union representing the employee in the grievance/arbitration procedure acts in such a discriminatory, dishonest, arbitrary, or perfunctory fashion as to breach its duty of fair representation.* In such an instance, an employee may bring suit against both the employer and the union, notwithstanding the outcome or finality of the grievance or arbitration proceeding. *Vaca,* 386 U.S. 171; *Hines,* 424 U.S. 554;" [462 U.S. at 163, 164; emphasis added.]

In directing the District Court to vacate the stay of arbitration, and to send this case out for arbitration—without provision for any evidentiary hearing — the Court of Appeals has ignored the petitioners' adequate pleadings of breach of fair representation, and has decided the case contrary to the doctrines of *Vaca, Hines* and *DelCostello.*

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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November 14, 1985.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-1882

Lonnie L. Adkins, et al,

Appellees

versus

Times-World Corporation,

Appellant

and

Roanoke Typographical Union # 60,
et al

Defendants

ORDER

Upon the motion of appellees to dismiss this appeal, we withhold decision on the motion pending decision on the merits of the appeal.

With the concurrences of Judge Hall and Judge Chapman.

/s/ H. E. Widener, Jr.

For the Court

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-1882

Lonnie L. Adkins; Philip Peterson; D. W. Thompson; G. R. Gibson; B. W. Payne; J. E. Smith; C. R. Mowbray; J. H. Thompson; J. J. Haskins; G. R. Wertz; R. E. Cooper; W. H. Morton; A. L. Hartwell; A. F. Cameresi; B. L. Fuller and L. W. Via, on behalf of themselves and all others similarly situated,

Appellees

Roanoke Typographical Union # 60,
versus

Appellant

and
Times-World Corporation,

and International Typographical Union,

Defendants

D. Gerald Coker (Paul D. Jones; Ford & Harrison on brief) for Appellant; T. Keister Greer; G. Carter Greer (Greer & Greer on brief) for Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, District Judge. (C/A 83-170).

Argued: May 7, 1985 Decided: August 23, 1985

Before PHILLIPS and SPROUSE, Circuit Judges, and WARD, United States District Judge for the Middle District of North Carolina, sitting by designation.

SPROUSE, Circuit Judge:

Lonnie L. Adkins and fifteen other journeymen printers brought this action again Times-World Corporation, Roanoke Typographical Union Local No. 60 (Local), and the International Typographical Union (International) under section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185 (1982). Times-World is a newspaper published in Roanoke, Virginia and is a party to a collective bargaining agreement with the Local of which the printers are members. The printers seek $42 million in damages, contending that Times-World violated a contractual agreement to provide them with lifetime employment. The printers also contend that the Local and the International were guilty of unfair representation because they did not adequately represent the printers in the pursuit of this action. Times-World and the unions contend that the issues involved in this action are all subject to arbitration and that this action cannot be maintained in the district court until arbitration proceedings have been exhausted. The trial court disagreed and, upon the printers' motion, issued an order staying arbitration proceedings pending pursuit of the district court action. Times-World and the unions appeal from the trial court's order staying arbitration. We reverse.

Times-World and the Local have entered into a collective bargaining agreement on four separate occasions over the past ten years. The threat of automation to job security became a primary concern of the printers in 1975. Consequently, at the completion of the 1975 collective bargaining agreement Times-World and the Local agreed to an addendum, guaranteeing job security until retirement age to certain journeymen printers employed in the composing room of Times-World. The

guarantee was conditioned on the maintenance of certain levels of advertising revenue by Times-World. The addendum was negotiated and reexecuted in 1976, 1979, and 1983 in conjunction with each subsequent collective bargaining agreement.

This dispute had its genesis in Times-World's action laying off three printers, Lonnie L. Adkins, Jonathan Willis, and John Synan. It was apparent in late 1982 that a reduction in the number of printers at Times-World was necessary. During negotiations for the 1983 agreement, Times-World and the Local agreed to a reduction in force program, under which Times-World offered to pay each of any five printers who voluntarily terminated their employment a lump sum severance based on the number of months remaining until normal retirement. Times-World published Walter Rugaber wrote Local president Willis on February 7, 1983, notifying him that there had been a continuing decline in full-run ROP (run of the press) advertising and extending until February 11 the deadline for employees to take advantage of the severance pay provision. Apparently, Times-World did not achieve the desired reduction in force, and on February 11 it notified Adkins, Willis, and Synan that they would be laid off effective February 27.

On February 14 the Local filed a grievance concerning the layoff of these three printers, contending that the layoffs breached the addendum to the contract and invoking the grievance and arbitration provisions of the collective bargaining agreement. At the Local's request, the International assigned a representative to assist with the arbitration. The Local subsequently requested that the unsettled grievance be advanced to the Joint Standing Committee as provided in the agreement, and Times-World agreed. The parties attempted to settle the layoff

grievances but were unsuccessful, and on March 16 Times-World and the Local agreed that the matter should go to binding arbitration as provided in the collective bargaining agreement. The parties selected an arbitrator and scheduled a hearing for June 23. The Local subsequently voted at a meeting in late March to rescind its agreement to arbitrate the dispute. At the next meeting in April, however, the Local reversed itself and voted to submit the layoff dispute to arbitration.

Meanwhile, this action was filed in district court on March 15. Times-World filed a motion to dismiss or alternatively for summary judgment, contending that the dispute was subject to mandatory arbitration. The printers filed a motion on June 16 to stay arbitration proceedings. The district court denied Times-World's motion to dismiss and granted the printers' motion to stay arbitration until its further order. In the meantime, the printers amended their complaint, adding both unions as defendants. Times-World and the unions appeal the district court's order staying arbitration.

All the parties candidly acknowledge the well-recognized policy of federal labor law favoring arbitration of labor disputes. The Supreme Court in the *Steelworkers Trilogy* made clear that, except for matters specifically excluded from arbitration in the collective bargaining agreement, all questions on which the parties disagree must be submitted to arbitration. *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960). The collective bargaining agreement in the instant case does not specifically exclude from arbitration

the guarantee of job security contained in the addendum. Section 2-02 of the agreement provides:

> This Agreement alone shall govern relations between the parties on all subjects concerning which any provision is made in this Agreement, and any dispute involving any such subjects shall be determined in accordance with Section 8 of this agreement.

Section 8-03, in turn, provides:

> In the event a settlement is not reached as provided in Section 8-01 or 8-02 of this Agreement [relating to the initial processing of grievances], all disputes which may arise as to the interpretation and application to be placed on any clause herein or alleged violation thereof shall be referred to a Joint Standing Committee of four members, two to be named by Employer and two by the Union . . . . The Joint Standing Committee shall meet within ten days from the day on which notice is given in writing that a meeting is desired and shall proceed forthwith to settle any question before it. Such decision shall be final and binding.

Section 8-04 of the agreement then provides that if the Joint Standing Committee is unable to resolve the grievance, the matter can be referred to an arbitration panel for final decision. Thus, the principal issue on this appeal is whether the addendum is a part of the collective bargaining agreement. If so, the layoff dispute is subject to the arbitration clause, which requires that all disputes be arbitrated. If, on the other hand, the addendum is not a part of the principal agreement, the layoff dispute is not subject to mandatory arbitration.

Times-World and the unions contend that the addendum is part of the collective bargaining agreement and, therefore, that any dispute arising from an alleged

violation of the addendum is subject to the grievance and arbitration provisions of the collective agreement and that the district court is without authority to entertain this action unless and until arbitration procedures are exhausted. The printers raise several issues but concede that a finding that the addendum is part of the collective bargaining agreement would resolve all the issues against them and require them to resort to arbitration. Because we conclude that the addendum is part of the collective bargaining agreement, it is unnecessary to consider the subsidiary issues raised by the printers.

Our conclusion that the body of the collective bargaining agreement and the addendum are part of the same contract rests on the language of the addendum, the negotiation history of the addendum, and the parties' conduct indicating their understanding that the two ocuments represent one composite group of obligations. The language of the addenda varied little from contract to contract. The current addendum provides:

> Notwithstanding anything to the contrary in the aforesaid agreement:
>
> The Employer intends to continue utilizing new newspaper production equipment, techniques and processes. Accordingly, the union will not object to unrestricted introduction of new and automated equipment, to unrestricted location of such equipment, to changes of any procedures, or to the removal from the composing room of any such equipment or any work, it being understood and agreed that some work now done in the composing room of Employer may in the future be performed elsewhere. The union shall have no jurisdiction over jobs, work or equipment which may be transferred outside the composing room.
>
> The Employer hereby guarantees to the journeymen whose names appear in priority order on ex-

> hibit A hereto that each of them shall have, until normal retirement age, lifetime job security within the composing room and no layoff or reduction in force shall occur except as a result of normal attrition or unless Employer shall determine that its business has been adversely affected by reduced advertising linage. Normal attrition shall include death, retirement, resignation, voluntary transfer, and discharge for cause.

Exhibit A contained a list of the protected employees and was appended to the addendum. Names were added to the list in successive agreements.[1]

The very title of the second instrument—addendum—suggests an inseparable link to another instrument, specifically the collective bargaining agreement to which it refers in its first sentence. The addendum relates to a major concern of the principal agreement, namely employment and layoff procedures for specific employees. Moreover, it commences "[n]otwithstanding anything to the contrary in the aforesaid agreement"—language which weaves the purposes of the two instruments even closer.

A review of the negotiation history of the parties strengthens the impression that the two instruments constituted a unitary agreement. The addendum had no existence separate from the collective bargaining agreement. It was first executed upon completion of the 1975 collective bargaining agreement. Thereafter, the addendum was reexecuted in 1976, 1979, and 1983 upon each renewal of the collective bargaining agreement.

Finally, it is obvious from the conduct of the plaintiffs involved in the layoff that they understood the addendum to be a part of the collective bargaining agreement and treated it as such. Three days after Adkins,

1 At the time of this action, all the plaintiffs in this case were listed in Exhibit A.

Willis, and Synan received their layoff notices, the Local filed a grievance utilizing the grievance provisions of the collective bargaining agreement. The Local, under the advice of the International, insisted on proceeding with the arbitration, admittedly over the objection of some members. Members of the Local finally agreed in their April meeting that it should be submitted to arbitration. It is significant that during these times one of the laid off printers, Willis, was president of the Local and, in his letter of February 14 to Rugaber, filed a grievance concerning the layoffs, invoking the grievance and arbitration provisions of the agreement.

It is a universally accepted rule that where a collective bargaining agreement contains arbitration provisions an employee may not maintain a section 301[2] action for the resolution of a dispute subject to those provisions unless the arbitration procedures have been exhausted. *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). Concluding that the layoff disputes arising under the addendum are subject to the arbitration clause, we reserve the judgment of the district court and remand the case with instructions that the stay of arbitration proceedings be vacated and that the court take such other actions as may be appropriate in view of our holding.

REVERSED AND REMANDED,
WITH INSTRUCTIONS

2 Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (1982).

UNITER STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-1882

FILED
Oct. 2, 1985
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Lonnie L. Adkins, et al,

Appellees,

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Times-World Corporation

Appellant,

and

Roanoke Typograhpical Union #60
and International Typographical
Union,

Defendants.

Appeal from the United States District Court for the
Western District of Virginia, at Roanoke.
Jackson L. Kiser, District Judge.

The appellees' petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Sprouse, with the concurrence of Judge Phillips and Judge Ward, United States District Judge, sitting by designation.

For the Court,

John M. Greacen
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 83-1882

FILED
Oct. 8, 1985
U. S. Court of Appeals
Fourth Circuit

Lonnie L. Adkins, et al,

Appellees,

versus

Times-World Corporation

Appellant,

and

Roanoke Typographical Union #60,
et al,

Defendants.

Appeal from the United States District Court for the
Western District of Virginia, at Roanoke.
Jackson L. Kiser, District Judge.

Upon consideration of appellees' motion for stay of mandate pending application to the United States Supreme Court for writ of certiorari,

IT IS ORDERED that the motion is denied.

For the Court—By Direction

John M. Greacen
Clerk

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of November, 1985, three copies each of the petition for writ of certiorari were mailed, postage prepaid, to D. Gerald Coker, Esq., Ford & Harrison, 600 Peachtree at the Circle Bldg., 1275 Peachtree Street, NE, Atlanta, Georgia 30309; to Daniel S. Brown, Esq., Woods, Rogers & Hazlegrove, 105 Franklin Road, S.W., Roanoke, Virginia 24011, counsel for Times-World Corporation; to C. Barry Anderson, Esq., Goldsmith & Anderson, P. O. Box 892, Radford, Virginia 24141, counsel for Roanoke Typographical Union # 60; to Brian A. Powers, Esq., and Robert J. Henry, Esq., O'Donoghue & O'Donoghue, 4748 Wisconsin Avenue, NW, Washington, D. C. 20016; and to Harry F. Hambrick, Esq., Wilson, Vogel, Creasy & Hambrick, Suite 600, First Federal Building, P. O. Box 2420, Roanoke, Virginia 24010-2420, counsel for International Typographical Union. I further certify that all parties required to be served have been served.

T. Keister Greer
110 Maple Avenue
Rocky Mount, Virginia 24151

Counsel for Petitioners